

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES PAPA,

Docket No.:

Plaintiff,

ECF CASE

- against -

PICONE/McCULLAGH JOINT VENTURE,

Defendant.

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**COMPLAINT
06 CIV 15276 (SCR)**

**PLAINTIFF DEMANDS
A JURY TRIAL**

Plaintiff, Plaintiff, JAMES PAPA Plaintiff, JAMES PAPA, Plaintiff, JAMES PAPA, by his attorneys, G

Defendant, allege as follows:

1. This is an action to remedy the failure of Defendant to properly pay Plaintiff at the rate of time-and-a-half as required by the Fair Labor Standards Act of 1938, as amended, 29 USC §201 et seq. Jurisdiction is conferred upon this Court by 29 USC §216 (b) of the Fair Labor Standards Act, by 28 USC §1331, as this action arises under the laws of the United States. 28 USC §1328, as this action arises under Acts of Congress regulating commerce. Additionally, Plaintiff claims failure under the principle of pendent jurisdiction, and owing, pursuant to the New York State Labor Law, to pay Plaintiff overtime at the rate of time-and-a-half as required by 12 NYCRR §142-2.2.

PARTIES

2. Plaintiff, JAMES PAPA, (hereinafter "PAPA") is a resident of the County of Westchester, and the State of New York.

3. Defendant PICONE/McCULLAGH (hereinafter "PICONE") is a New York employer with offices located at 31 Garden Lane, Lawrence, New York 11559.

Defendant is an employer engaged in interstate commerce (29 USC §201) and to the New York State Labor Law (Labor Law §§190 *et seq.*) (6).

FACTS

5. Plaintiff held an hourly paid non-exempt position. Plaintiff held an hourly rate of \$33.59 per hour.

6. Although Plaintiff was always required to work between 7:00 a.m. 30 minutes for lunch, he averaged more than 40 hours per day before the start of his normal shift. Thus, Plaintiff worked 45 hours per week.

AS AND FOR A FIRST CAUSE OF ACTION

8. Although Plaintiff worked overtime during the period June 2006 he did not receive either straight pay and/or overtime compensation for this period.

9. Plaintiff Plaintiff earned between \$31.00 and \$33.00 Dollars per hour during the time he was employed by Defendant.

10. Plaintiff received no compensation for the hours he worked Plaintiff received no compensation

11. Plaintiff did not receive overtime payment at the rate of time-and-a-half, in violation of the Fair Labor Standards Act, although he worked more than forty (40) hours per week.

12. Defendant sDefendant s failureDefendant s failure to pay Plaintiff wages andDefendant s failure to was willful.

AS AND FOR A SECOND CAUSE OF ACTION
PENDENT CAUSE OF ACTION

14. From July, 2002 through August, 2006, Plaintiff was From July, 2002 through August, 2006, For hours worked, in violation of Labor Law §190 *et seq.*, and §652(1). This violation was willful.

WHEREFORE, Plaintiff requests, Plaintiff requests this Court enter an Order in favor of Plaintiff and against Defendant:

On The Fair Labor Standards Act Causes of Action

- (a) Declaring Defendant violated the Fair Labor Standards Act for the period between July 2002 through and including August 2006;
- (b) Declaring Defendant's violation of the Fair Labor Standards Act was willful;
- (c) Granting Plaintiff payment of his hourly wage for each and every hour worked during these periods;
- (d) Granting Plaintiff time-and-a-half for each and Granting Plaintiff time-and-a-half for each of these periods;
- (e) Granting Plaintiff an equal amount Granting Plaintiff an equal amount Granting Plaintiff an equal amount

On the New York State Labor Law Cause of Action

2.2;

(g) Declaring Defendant violated the New York State
NYCRR §142-2.2 was willful;

(h) Declaring that Defendant s
NYCRR §142-2.2 was willful;

(i) Granting Plaintiff payment of his hourly wage for each and every hour worked during
this periods;

(j) Awarding Plaintiff for the period July 2002 through August 2
overtime at the rate of time and-a-half for working over forty (40) hours per week during
overtime at the rate of time and-a-half for working over forty (40) hours per week during

(k) Finding that Defendant s refusal to pay Plaintiff
willful, and awarding Plaintiff an additional amount
(25%) percent of the total amount of wages found to be due; and

(l) Awarding Plaintiff reasonable attorney s fees.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all issues properly before this Court Plaintiff demands a trial by fact raised by this Complaint.

Dated: New Rochelle, New York
December 14, 2006

Yours, etc.,

GOODSTEIN & WEST

By: /S/

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